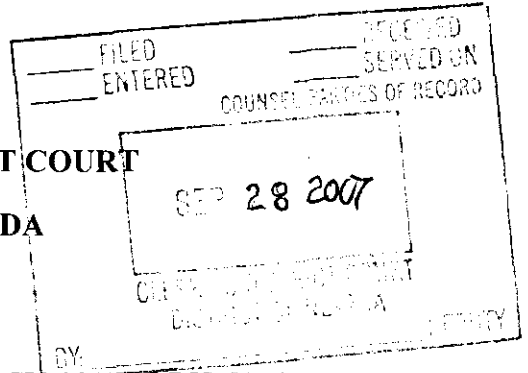


**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**



WILLIE LEDET, JR. )

Plaintiff, )

vs. )

GIBSON, ET AL., )

Defendants. )

3:06-CV-00179-LRH (VPC)

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

September 28, 2007

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendant Mike Keating's ("Keating") motion for partial summary judgment (#62). Plaintiff opposed (#66) and Keating replied (#68). The court has thoroughly reviewed the record and the motions and recommends that Keating's motion for partial summary judgment (#62) be granted.

**I. HISTORY & PROCEDURAL BACKGROUND**

Plaintiff Willie Ledet ("plaintiff") is a prisoner at Nevada State Prison ("NSP") in the custody of the Nevada Department of Corrections ("NDOC") (#4). Plaintiff brings his complaint pursuant to 42 U.S.C. § 1983, alleging violations of his Fourth Amendment right against unlawful search and seizure, his Eighth Amendment right against cruel and unusual punishment, and his Fourteenth Amendment rights to equal protection and due process of law. *Id.* Plaintiff names as defendants Detectives S. Gibson, M. Keating, B. Adamson, R. Laffins, and B. Goins. *Id.*

Plaintiff alleges that on April 4, 2004, Reno Police Department's "Street Enforcement Team" arrested him prior to positively identifying him and without identifying themselves as undercover officers. *Id.* Plaintiff asserts that defendants "tasered" him multiple times, after which he fell and demanded to see his attorney. *Id.* Plaintiff alleges the defendants then kicked him in his ribs and face while he was handcuffed, and that one officer held him down and beat

1 him severely. *Id.* Plaintiff further asserts that he was taken to Washoe County Jail where he was  
 2 denied medical treatment due to the extent of his physical injuries. *Id.* Thereafter, defendants  
 3 took plaintiff to the Washoe Medical Center emergency room where he was treated for “multiple  
 4 lacerations, a mild contusion to the head, two broken ribs, two chipped, missing or broken teeth,  
 5 many cuts and bruises along with bleeding from the face, neck and chest.” *Id.* In Count I,  
 6 plaintiff alleges that Keating “unlawfully searched Plaintiff, not just a pat search.” *Id.*, p.4.  
 7 Keating moves for partial summary judgment as to plaintiff’s Fourth Amendment unlawful search  
 8 claim (#62).

9 The court notes that the plaintiff is proceeding *pro se*. “In civil cases where the plaintiff  
 10 appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit  
 11 of any doubt.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9<sup>th</sup> Cir. 1988); *see*  
 12 *also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

## 13 II. DISCUSSION & ANALYSIS

### 14 A. Discussion

#### 15 1. Summary Judgment Standard

16 Summary judgment allows courts to avoid unnecessary trials where no material factual  
 17 disputes exist. *Northwest Motorcycle Ass’n v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471 (9<sup>th</sup>  
 18 Cir. 1994). The court grants summary judgment if no genuine issues of material fact remain in  
 19 dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(C).  
 20 In deciding whether to grant summary judgment, the court must view all evidence and any  
 21 inferences arising from the evidence in the light most favorable to the nonmoving party. *Bagdadi*  
 22 *v. Nazar*, 84 F.3d 1194, 1197 (9<sup>th</sup> Cir. 1996). In inmate cases, the courts must

23 [d]istinguish between evidence of disputed facts and disputed  
 24 matters of professional judgment. In respect to the latter, our  
 25 inferences must accord deference to the views of prison  
 26 authorities. Unless a prisoner can point to sufficient evidence  
 regarding such issues of judgment to allow him to prevail on the  
 merits, he cannot prevail at the summary judgment stage.

27 *Beard v. Banks*, \_\_\_ U.S. \_\_\_, 126 S.Ct. 2572, 2576 (2006). Where reasonable minds could differ  
 28 on the material facts at issue, however, summary judgment should not be granted. *Anderson v.*

1 *Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986).

2 The moving party bears the burden of informing the court of the basis for its motion, and  
3 submitting evidence which demonstrates the absence of any genuine issue of material fact.  
4 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden,  
5 the party opposing the motion may not rest upon mere allegations or denials in the pleadings but  
6 must set forth specific facts showing that there exists a genuine issue for trial. *Anderson*, 477  
7 U.S. at 248. Rule 56(c) mandates the entry of summary judgment, after adequate time for  
8 discovery, against a party who fails to make a showing sufficient to establish the existence of an  
9 element essential to that party's case, and on which that party will bear the burden of proof at  
10 trial. *Celotex*, 477 U.S. at 322-23.

11 **B. Analysis**

12 Plaintiff's main assertion is that Keating's April 2, 2004 search during plaintiff's arrest  
13 was unlawful because the outstanding warrant for plaintiff's arrest was invalid for lack of  
14 probable cause, or alternatively, that no outstanding arrest warrant actually existed on April 2,  
15 2004 (#66). However, the court need not reach these issues, because the court concludes that  
16 plaintiff's unlawful search claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

17 In *Heck*, the Court held that

18 [i]n order to recover damages for allegedly unconstitutional  
19 conviction or imprisonment, or for other harm caused by actions  
20 whose unlawfulness would render a conviction or sentence  
21 invalid, a § 1983 plaintiff must prove that the conviction or  
22 sentence has been reversed on direct appeal, expunged by  
23 executive order, declared invalid by a state tribunal authorized to  
24 make such determination, or called into question by a federal  
25 court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A  
26 claim for damages bearing that relationship to a conviction or  
27 sentence that has *not* been so invalidated is not cognizable under  
28 § 1983. Thus, when a state prisoner seeks damages in a § 1983  
suit, the district court must consider whether a judgment in favor  
of the plaintiff would necessarily imply the invalidity of his  
conviction or sentence; if it would, the complaint must be  
dismissed unless the plaintiff can demonstrate that the conviction  
or sentence has already been invalidated.

*Id.* at 486-87. There is a "strong judicial policy against the creation of two conflicting resolutions  
arising out of the same or identical transaction." *Id.* at 485; *see also Guerrero v. Gates*, 442 F.3d

1 697, 703-04 (9th Cir. 2006). The Court recently reaffirmed the holding in *Heck*, stating

2 [t]hese cases, taken together, indicate that a state prisoner's § 1983  
3 action is barred (absent prior invalidation)- no matter the relief  
4 sought (damages or equitable relief), no matter the target of the  
5 prisoner's suit (state conduct leading to a conviction or internal  
6 prison proceedings)- if success in that action would necessarily  
7 demonstrate the invalidity of confinement or its duration.

8 *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (emphasis in original).

9 Defendant's evidence reveals that on April 2, 2004, defendants arrested plaintiff in the  
10 parking lot of the Sands Casino in Reno. *Id.*, Exhibit B. It is clear that defendants "tasered"  
11 plaintiff at least three times in the course of the arrest, although the parties dispute whether this  
12 force was necessary and how much additional force may have been used. *Id.* Keating searched  
13 plaintiff during the arrest and located 12.2 grams of methamphetamine in his pants pocket. *Id.*  
14 After plaintiff's arrest, defendants booked him on charges of trafficking a controlled substance,  
15 possession of a controlled substance for sale, possession of a controlled substance, and  
16 obstructing a police officer and resisting arrest (#62, Exhibit D). On September 2, 2004, plaintiff  
17 was sentenced to time in prison and monetary fines after a jury convicted him of the crime of  
18 possession of a trafficking quantity of a controlled substance. *Id.*, Exhibit H; *see also* Exhibit B,  
19 COS000163. It is clear from the evidence that this conviction was based on the evidence Keating  
20 located in plaintiff's pocket during the April 2, 2004 search.

21 Keating contends that had the search been unconstitutional, the evidence likely would  
22 have been suppressed at plaintiff's criminal trial (#62). Keating argues that plaintiff may not  
23 maintain a section 1983 action if the alleged harm – the unconstitutional search – would render  
24 plaintiff's conviction invalid. *Id.* Keating further maintains that plaintiff cannot prove injury  
25 here, because the Court in *Heck* held that a conviction is not an "injury" for the purposes of  
26 section 1983. *Id.*

27 Plaintiff claims that he is not attempting to overturn his conviction through this section  
28 1983 action, and that therefore, the *Heck* doctrine does not apply (#66).

Plaintiff need not affirmatively challenge his conviction; all that is required is "a § 1983  
action that does not seek damages directly attributable to conviction or confinement but whose

1 successful prosecution would necessarily imply that the plaintiff's criminal conviction was  
2 wrongful." *Heck*, 512 U.S. at 487, n. 6. Such is the case here. A jury convicted plaintiff of  
3 possession of a trafficking quantity of a controlled substance based on the methamphetamine  
4 defendant Keating located in plaintiff's pants pocket on April 2, 2004. If the court agrees that the  
5 April 2 search was unlawful, then the evidence Keating found in plaintiff's pocket should not  
6 have been presented at plaintiff's criminal trial. Therefore, any finding that the search was  
7 unlawful would "necessarily imply the invalidity of [plaintiff's] conviction or sentence." *Id.* at  
8 487.

9 Moreover, even if the court assumes that plaintiff's successful section 1983 action "would  
10 not *necessarily* imply that the plaintiff's conviction was unlawful," plaintiff would still be  
11 required to prove "not only that the search was unlawful, but that it caused him actual,  
12 compensable injury." *Heck*, 512 U.S. at 487, n. 7. However, "actual, compensable injury... does  
13 not encompass the 'injury' of being convicted and imprisoned (until his conviction has been  
14 overturned)." *Id.* Plaintiff has not provided evidence that his conviction has been overturned.  
15 Moreover, plaintiff has not identified, nor does the court see, any actual or compensable injury.  
16 The court concludes that plaintiff's unlawful search claim is barred by the *Heck* doctrine.

### 17 III. CONCLUSION

18 Based on the foregoing and for good cause appearing, the court concludes that plaintiff's  
19 unlawful search claim in count I violates the *Heck* doctrine. As such, the court recommends that  
20 Keating's motion for partial summary judgment (#62) be **GRANTED**.

21 The parties are advised:

22 1. Pursuant to 28 U.S.C. § 636(b)(1)© and Rule IB 3-2 of the Local Rules of Practice,  
23 the parties may file specific written objections to this report and recommendation within ten days  
24 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
25 Recommendation" and should be accompanied by points and authorities for consideration by the  
26 District Court.

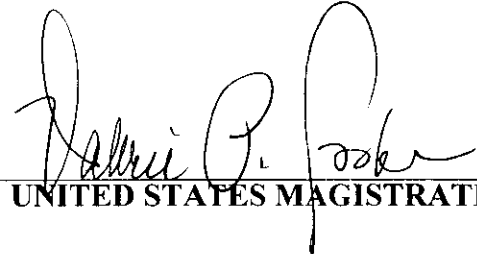
27 2. This report and recommendation is not an appealable order and any notice of appeal  
28 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's

1 judgment.

2 **IV. RECOMMENDATION**

3 **IT IS THEREFORE RECOMMENDED** that Keating's motion for partial summary  
4 judgment (#62) be **GRANTED**.

5 **DATED:** September 28, 2007.

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8 **UNITED STATES MAGISTRATE JUDGE**  
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